

## Insights

# FTC CHAIR REQUESTS INFORMATION ON BIG TECH “CENSORSHIP”

SMALL DROP IN THE BIG TECH OCEAN?

Feb 27, 2025

On Thursday, February 20, 2025, FTC Chairman Andrew Ferguson announced a Request for Information (RFI) for “public submissions from anyone who has been a victim of tech censorship (banning, demonetization, shadow banning, etc.), from employees of tech platforms, or from anyone else who can shed light on these practices and the way in which they may violate the law.” While Chairman Ferguson announced this RFI with great fanfare, the reality is that it is unlikely to lead to any groundbreaking information or conclusions. Instead, it should be understood as a small, initial investigatory step with a track record of rarely leading to significant action.<sup>[1]</sup>

An RFI is the smallest investigatory maneuver that Chairman Ferguson could have taken. Mr. Ferguson had several other options available to him. For example, he could have initiated a so-called Section 6(b) study (named after the section that authorizes the FTC to initiate such inquiries, Section 6(b) of the FTC Act, 15 U.S.C. § 46(b)). Such an option would have allowed the FTC to issue subpoenas to parties with relevant information. Chairman Ferguson also could have initiated a formal investigation, although such an investigation is rarely publicly acknowledged. These steps would have required more resources (and potentially less press coverage), so the decision to start with a small investigatory step could be a reflection of the limited resources currently available to the FTC. Moreover, the FTC’s definition of “censorship” in this RFI is a novel one that does not appear to have been accepted by any court or agency, so other potential investigative steps would likely have required more refinement of that concept before proceeding. Of course, the FTC could still take these other investigatory steps at a later time.

The RFI also presents a circuitous effort to find the information Mr. Ferguson most likely wants, namely evidence of some type of agreement between the technology companies regarding “censorship.” Mr. Ferguson has been clear since before he became FTC Chairman that he desires to “prosecute any unlawful collusion between online platforms, and confront advertiser boycotts which threaten competition among those platforms.” This would be a similar goal to that of the House Judiciary Committee in investigating whether there was collusion among investors when pushing for companies to adopt sustainability initiatives. Evidence of an actual agreement would

also help bridge the divide between the two sides of the Republican party, namely [populism and traditional conservatism](#). The “oval” of the Venn Diagram between those two sides is evidence of unlawful concerted activity. Additionally, looking for an agreement between the competitors would be in line with the views of [Vice President Vance](#) and [Elon Musk](#), who have both suggested that any group of companies that disagree with them are part of a larger boycott or cartel.

But the RFI is an unusual method for uncovering evidence of collusion relating to censorship. Factfinders often infer collusive activities from parallel public conduct, internal whistleblowers, or company documents, many of which the FTC already has access to. For example, the FTC’s longstanding litigations against several large technology companies has likely given the agency a lot of discovery from both parties and non-parties alike that may help shed light on this type of conduct. By contrast, an RFI is open to comments from the general public, and the probative nature of those comments varies and might be limited to people with specific types of information, biases, or larger goals (e.g., trolling).

If Chairman Ferguson sticks with just the RFI, we expect no significant action to come from it. The last completed RFI was the one [issued by the DOJ, FTC, and the Department of Health and Human Services](#), aimed at acquiring information about “private-equity and other corporations’ increasing control over health care.” After the three agencies received information, the agencies issued a [final report](#) that received minimal public attention and was largely a recap of previous conclusions and articles.

Based on this, clients should not be overly concerned about the FTC’s RFI into big tech “censorship.” However, clients should stay mindful of the progress of this investigation, especially if more advanced investigatory steps are taken by the FTC in the future

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[1] The same can be said about the RFIs issued by the FTC under the Biden administration, which Chairman Ferguson subsequently withdrew, leading former FTC Chair Lina Khan to [republish the withdrawn RFIs](#) as her final public act as an FTC Commissioner.

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